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6 SALVADORA C. DOMINGUEZ,
7 Plaintiff,
8 v.
9 MICHAEL J. ASTRUE,
10 Defendant.

No. C 07-04812 MHP

MEMORANDUM & ORDER

Re: Cross-Motions for Summary Judgment

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13 Having exhausted her administrative remedies, claimant Salvador Castro Dominguez
14 (“claimant”) seeks judicial review, pursuant to 42 U.S.C. section 405(g), of a final decision of
15 Michael J. Astrue, the Commissioner of Social Security (“defendant”). Now before the court is
16 claimant’s motion for summary judgment or, in the alternative, motion for remand, and defendant’s
17 cross-motion for summary judgment. Having considered the arguments presented and for the
18 reasons stated below, the court enters the following memorandum and order.
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BACKGROUND

21 On August 5, 2004, claimant filed applications for disability insurance benefits and
22 supplemental security income under Titles II and XVI of the Social Security Act, alleging a
23 disability date of February 1, 2003. Certified Administrative Transcript (“TR”) at 57-59, 450-59.
24 The applications were denied initially and on reconsideration. TR at 52, 38. On November 15,
25 2006, claimant had a hearing before the Administrative Law Judge (“ALJ”). TR at 483.
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Claimant is a forty-nine year old woman from Nicaragua with an eighth grade education. TR
at 484. Claimant stated she is presently unable to work because of trouble with her knees, back,
hands and memory. TR at 487. Claimant lives with her daughter, Mayling Dominguez Castro, in

1 Daly City. TR at 451. Regarding her daily routine, claimant stated she makes sandwiches for her
2 daughter, does exercises, sometimes goes shopping with her daughter, does some cooking and
3 cleaning, and sometimes visits relatives. TR at 491.

4 At the hearing, a vocational expert testified as an expert witness on two hypotheticals. TR at
5 498, 499. The expert found that, under the first hypothetical where claimant had a 40-50% reduction
6 in her ability to perform complex tasks, a 10% reduction in her ability to perform simple tasks, and
7 her physical limitations, claimant would still be able to perform her previous work of a laundry
8 folder. TR at 499. The expert noted that, under the second hypothetical, if claimant had a 40-50%
9 reduction in her ability to perform simple tasks, as opposed to 10%, there would be no job in the
10 labor market that claimant could perform. TR at 500-01.

11 The ALJ decision, dated December 5, 2006, found that claimant is not disabled under the
12 Social Security Act. TR at 21-27. On July 16, 2007, the Social Security Appeals Council found no
13 reason to review the ALJ decision, which became the final decision of the Commissioner of Social
14 Security. TR at 6. Claimant then sought judicial review pursuant to 42 U.S.C. section 405(g).

15

16 I. Claimant's Physical Complaints

17 Claimant suffers from many physical ailments. Claimant's chief physical complaints include
18 knee pain, back pain, shoulder pain and carpal tunnel syndrome in her right hand. TR at 22, 67, 204.
19 Since claimant's 2002 work injury, claimant has been treated by approximately eight doctors for her
20 various physical complaints. Claimant has undergone surgery for both her carpal tunnel syndrome
21 and her left knee, and doctors have continued to monitor any disc disease in her back. Most of the
22 doctors agree that claimant is somewhat limited in her ability to perform certain tasks, such as heavy
23 lifting, and repetitive bending, stooping, squatting and kneeling. The doctors generally agree that
24 claimant's ability to reach is also somewhat limited. Two of her doctors, however, opine that
25 claimant's limitations are more severe and would preclude her from all but extremely light work.
26 Furthermore, several of claimant's doctors noted that claimant appeared to have an exaggerated pain
27 response.

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1 In 1998, claimant worked for American Linen, where claimant states she suffered a right
2 carpal tunnel injury when a laundry bag fell. TR at 465. Claimant's right carpal tunnel injury was
3 treated and resolved with surgery. TR at 178. Claimant attributes the cause of her knee and back
4 pain to an August 2002 work-related injury involving picking up frozen food weighing about forty-
5 to-fifty pounds. TR at 143. Multiple doctors indicated that claimant suffered from damage to her
6 left knee. TR at 439, 440, 159-174, 197. In a March 2003 MRI, claimant's left knee showed a
7 lateral meniscus tear, and her lumbar spine showed a very small midline disc protrusion. TR at 154,
8 155. In April 2003, one of claimant's doctors, Gloria Contreras, opined claimant had a chronic left
9 knee sprain and lower back pain, and that claimant should only perform work that did not include
10 frequent bending, stooping, lifting, pushing or pulling. TR at 179, 180. Also in April 2003,
11 claimant's doctor Jules Steimnitz found that claimant's back and knee pain precluded her from very
12 heavy work. TR at 397. He also found positive Waddell testing—a test where a “positive” result
13 may indicate that back pain may be the result of psychological factors in addition to physical
14 factors—noting that claimant showed such indicators as diffuse tenderness, hypersensitivity to light
15 touch and over-reaction to stimuli. TR at 394.

16 In November 2003, claimant's doctor Jeffrey Schubiner performed surgery on her left knee,
17 and ordered her to remain off work until around January 2004. TR at 193, 194, 198, 199. In a
18 January 2004 MRI, claimant's lumbar spine showed some indication of disc disease at three discs.
19 TR 384, 385. Schubiner opined that her knee problems were resolved. TR at 191. Schubiner
20 further opined that claimant was histrionic in her reaction to pain and that she likely had chronic
21 pain syndrome. TR at 182, 201.

22 In April 2004, Steimnitz once again opined that claimant was precluded from only very
23 heavy work and noted that she demonstrated non-anatomic responses to routine testing. TR at 402.
24 Claimant received epidural steroid injections for her back pain from September 2004 through May
25 2005 from another doctor, Yung Chen, and was instructed to remain off work for six weeks after
26 each injection. TR at 216-229.

27 In November 2004, another doctor, Calvin Pon, indicated claimant's chief complaints were
28 left shoulder pain, right hand pain and numbness, low back pain and left knee pain. TR at 204. Pon

1 reported claimant stated that she performs independent daily living activities, such as dressing,
2 cooking, feeding, hygiene-related activities, driving a car and some housework. TR at 204, 205.
3 Pon opined that claimant should be able to stand and walk for a total of four to six hours during an
4 eight-hour workday, to sit for a total of six hours during an eight-hour workday, and to lift and carry
5 ten pounds frequently and twenty pounds occasionally. TR at 206. Also in November 2004,
6 Steimnitz reiterated his estimate that claimant was precluded from very heavy lifting, squatting and
7 kneeling, a diagnosis that was echoed in September 2005 by another of claimant's doctors, Stanley
8 Baer. TR at 386, 369.

9 In October 2005, another doctor, Edward Katz, recorded claimant's assertion that she had
10 pain in the left leg, right knee, neck and shoulders, left-sided weakness and numbness in both hands.
11 TR at 259. Katz stated claimant made a nice recovery from her knee surgery and opined claimant
12 should be precluded from heavy lifting, repetitive bending and stooping, and repetitive squatting and
13 kneeling. TR at 263.

14 In a March 2006 MRI for Steimnitz, claimant's left knee showed a 1.5 cm cyst but no
15 meniscal tear. TR at 413. In an April 2006 follow up, Steimnitz opined claimant has developed
16 chronic pain and referred her to a cognitive behavioral pain management and neurosurgical
17 consultations. TR at 419. In June 2006, another doctor, Bruce McCormack, stated claimant was not
18 a candidate for any spine surgery, fusion or discectomy because predicted outcomes for people in
19 claimant's position were poor. TR at 426.

20 In an undated medical source statement of ability to do work related activities, Steimnitz
21 opined that claimant was occasionally and frequently precluded from lifting less than ten pounds.
22 TR at 447. Steimnitz further opined that claimant could stand for less than two hours a day and sit
23 for less than six hours. TR at 447. Finally, Steimnitz opined that claimant was limited to occasional
24 reaching. TR at 449.

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26 II. Claimant's Mental Complaints

27 Claimant has seen four different treating psychiatrists/psychologists and social workers, and
28 her record has been reviewed by three additional psychiatrists. While all generally agree that

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1 claimant suffers from depression, the doctors disagree as to the exact effect that has on claimant's
2 ability to function. See, e.g., TR at 234, 267, 269, 328-47, 234,

3 In June 2005, psychologist Jonathan Gonick-Hallows opined that claimant presented some
4 histrionic features in describing her life and her history. TR at 235. Gonick-Hallows diagnosed
5 claimant with major depression and Global Assessment of Functioning ("GAF") of fifty-seven. TR
6 at 235. The GAF uses a one to one hundred scale where one hundred is totally functional. At the
7 same time, psychiatrist Howard Hansell opined that claimant was capable of simple, repetitive tasks
8 in a setting accounting for her physical discomforts and limitations, and that there were no objective
9 findings of severe physical or psychological impairment which would impede claimant's ability to
10 perform all work activities. TR at 255-56.

11 From April 2005 to January 2006, social worker Teresa Soto periodically rated claimant's
12 GAF at fifty-one to sixty or at forty-one to fifty. Compare top TR at 269 with bottom TR at 269.
13 During roughly that same time period, psychiatrist Frederick Becker variously opined that claimant
14 had a GAF of fifty-one or forty-one. TR at 268, 274.

15 In February 2006, psychologist Jonathan Dunn performed a psychological evaluation on
16 claimant, but cautioned that the analysis was based on the data at face value, and not confirmed by
17 clinical or historical data. TR at 405, 406. Dunn stated claimant's Wahler Physical Symptom
18 Inventory score suggested that claimant tends to exaggerate her perceptions, and underscored the
19 unlikelihood that all her physical complaints were based on genuine organic pathology. TR at 408.
20 The Wahler Physical Symptom Inventory is a test used by psychologists to help determine if
21 physical complaints are psychologically based.

22 In a June 2006 psychiatric evaluation, psychiatrist Julie B. Stahl evaluated claimant based on
23 Dunn's psychological testing, her review of claimant's medical and psychological records from
24 Kaiser South San Francisco, and her own interview and tests. TR 432, 436, 439. Stahl opined that
25 claimant's physical injury was related to her work injury, and it was unclear whether her psychiatric
26 symptoms arose from the same injury. TR at 443. Stahl diagnosed claimant with adjustment
27 disorder with mixed anxiety and depressed mood and GAF of sixty. TR at 444. Stahl found that
28 claimant's ability to comprehend and follow instructions and perform simple and repetitive tasks in a

1 work setting was not impaired. TR at 445. Stahl opined that claimant would likely be slightly
2 impaired in her ability to maintain a work pace appropriate to a given workload, to perform complex
3 or varied tasks, to relate to others beyond giving and receiving instructions, to influence people, to
4 make generalizations, evaluations or decisions without immediate supervision, and to accept and
5 carry out responsibility for direction, control and planning. TR at 445.

6 In November 2006, Michael D. Goldfield performed a similar review of claimant's prior
7 medical records and diagnosed claimant with major depressive disorder, panic disorder and a GAF
8 of fifty-three. TR at 463-70.

9

10 III. The ALJ's Findings

11 On December 5, 2006, the ALJ found claimant was not disabled and therefore denied her
12 social security benefits. TR at 26. In arriving at this conclusion, the ALJ made several findings of
13 fact. The ALJ found that claimant had not been engaged in substantial gainful activity since
14 February 1, 2003. TR at 21. The ALJ found that claimant had several severe impairments including
15 carpal tunnel syndrome, degenerative disc disease of the lumbar spine, left knee pain and has
16 depression, all well supported by medical evidence. TR at 25-26. The ALJ determined that these
17 impairments, either singly or in combination, were not of sufficient severity to meet or equal one of
18 the impairments determined to be conclusively disabling. TR at 26. The ALJ, based on the record
19 as a whole, decided to give substantial weight to Stahl's opinion. TR at 25. For claimant's physical
20 residual functional capacity ("RFC"), the ALJ determined that claimant's physical impairments did
21 not prevent her from performing light work except for work involving occasional stooping, crawling
22 and bending. TR at 26, 27. For claimant's mental RFC, the ALJ found claimant had a mild
23 restriction on activities of daily living and social functioning, as well as in concentration, persistence
24 and pace. TR at 27. In view of the above restrictions, the ALJ found claimant's impairments did not
25 prevent her from performing past relevant work, such as laundry folder work. TR at 27.

26 The ALJ did not find the testimony of claimant or claimant's daughter to be credible in light
27 of inconsistencies in claimant's reported pain and her extensive daily living activities. In particular,
28 the ALJ found that the doctors had positive prognoses for her knee, TR at 25, and that she had a

1 history of non-anatomic responses to pain and was prone to histrionics. TR at 22. Claimant was
2 also taking multiple pain medications. TR at 23. Furthermore, the ALJ found other inconsistencies
3 between claimant's self-reported work history, educational history and ability to speak or write
4 English and what the record supported. TR at 25, 26.

5 On July 16, 2007, the Appeals Council reviewed the ALJ's decision and considered
6 additional evidence submitted by claimant. TR at 6. The Council affirmed the ALJ's decision and
7 found that the additional evidence, a psychological report by Michael Goldfield, did not provide a
8 basis for changing the ALJ's determination. TR at 7. The Council found that although the report
9 was consistent in part with the ALJ's previously credited Stahl report with respect to the functional
10 limitations, the report relied on some questionable underlying data. TR at 7. The Council therefore
11 accorded little weight to the newly submitted report. TR at 7.

12

13 **LEGAL STANDARD**

14 A district court may disturb the Commissioner's final decision "only if it is based on legal
15 error or if the fact findings are not supported by substantial evidence." Sprague v. Bowen, 812 F.2d
16 1226, 1229 (9th Cir. 1987). "Substantial evidence, considering the entire record, is relevant
17 evidence which a reasonable person might accept as adequate to support a conclusion." Matthews v.
18 Shalala, 10 F.3d 678, 679 (9th Cir. 1993). The court's review, however, "must consider the record
19 as a whole," which includes both evidence which supports as well as evidence which detracts from
20 the Commissioner's decision. Desrosiers v. Sec'y of Health & Human Servs., 846 F.2d 573, 576
21 (9th Cir. 1988). If, however, "the evidence is susceptible to more than one rational interpretation,"
22 the Commissioner's decision must be affirmed. Sandgathe v. Chater, 108 F.3d 978, 980 (9th Cir.
23 1997). Even if substantial evidence supports the Commissioner's fact findings, his decision must be
24 set aside if improper legal standards were applied in reaching that decision. See Benitez v. Califano,
25 573 F.2d 653, 655 (9th Cir. 1978).

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DISCUSSION

In order to qualify for disability benefits, a person must establish a medically determinable physical or mental impairment that (1) is expected to result in death or last for a continuous period of at least twelve months (2) which prevents him or her from engaging in substantial gainful activity. See 20 C.F.R. §§ 404.1520, 416.920; see also *Galant v. Heckler*, 753 F.2d 1450, 1452 (9th Cir. 1984). In determining whether a claimant is disabled, the ALJ must use a five-step analysis in which progression to the next step is contingent on the result of the previous step. See *Bowen v. Yuckert*, 482 U.S. 137, 141-43 (1987). The five steps are (1) whether the claimant is presently gainfully employed; and if not (2) whether claimant has a severe impairment; and if so (3) whether the impairment meets or equals one of the impairments determined to be conclusively disabling; and if so (4) whether the impairment prevents the claimant from performing his or her past relevant work; and if so (5) the burden then shifts to the Commissioner to show whether the claimant is able to perform any other work within the national economy. *Id.*

The ALJ found that claimant was not presently working and that she had several severe impairments, including carpal tunnel syndrome, degenerative disc disease of the lumbar spine, left knee pain and depression, but that the impairments were not such that claimant was conclusively disabled. TR at 26. Relying on the guidance of a vocational expert, the ALJ found that claimant could perform her past relevant work as a laundry folder. TR at 26. Since the ALJ found that claimant could perform her past relevant work, the ALJ did not need to perform the last step of the analysis.

Claimant contends that the ALJ committed legal error by rejecting the treating physicians' opinions of claimant's physical and mental impairments, by rejecting testimony of claimant and claimant's daughter as not credible and by failing to rely on substantial evidence in finding that claimant can perform her past work. The court will address each in turn.

I. Opinions of Physical Impairments

Claimant argues that the ALJ's rejection of the treating physicians opinion is legal error on two fronts, both of which would impact the ALJ's final decision. First, claimant argues that treating

1 physician Steimnitz's undated opinion limiting claimant's work ability was improperly rejected.
2 Second, claimant argues that the ALJ failed to provide any reason for rejecting Steimnitz's opinion
3 that claimant's shoulders were impaired.

4

5 A. Steimnitz's Undated Opinion

6 Claimant argues that the ALJ failed to provide legally sufficient reasons to reject the undated
7 opinion of one of the treating physicians, Steimnitz, regarding claimant's ability to perform certain
8 functions. A treating physician opinion carries greater weight than non-treating physician opinions.
9 Smolen v. Chater, 80 F.3d 1273, 1285 (9th Cir. 1996).

10 In the opinion in question, Steimnitz marked boxes for his assessment and provided little-to-
11 no support for the assessment. TR 447-49. This assessment indicated claimant's impairment limited
12 her to occasionally or frequently lifting and carrying less than ten pounds, to standing and walking
13 less than two hours in an eight-hour workday, to sitting less than six hours in an eight-hour work
14 day. Id. Claimant argues that under this assessment, claimant would not be able to perform even
15 sedentary work.¹ Claimant argues that the ALJ's reliance on claimant's exaggeration of symptoms
16 was not a legitimate reason to reject Steimnitz's statement because there is no evidence that
17 Steimnitz's opinion was based solely on claimant's subjective symptoms.

18 "The ALJ may reject the opinion of a treating physician in favor of a conflicting opinion of
19 an examining physician if the ALJ makes 'findings setting forth specific, legitimate reasons for
20 doing so that are based on substantial evidence in the record.'" Thomas v. Barnhart, 278 F.3d 947,
21 957 (9th Cir. 2002), citing Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989). As noted
22 above, substantial evidence to support a finding is "relevant evidence which a reasonable person
23 might accept as adequate to support a conclusion." Matthews, 10 F.3d at 679. The ALJ can "meet
24 this burden by setting out a detailed and thorough summary of the facts and conflicting clinical
25 evidence, stating his interpretation thereof, and making findings." Thomas, 278 F.3d at 957, citing
26 Magallanes, 881 F.2d at 751.

27 The ALJ set forth specific, legitimate reasons for rejecting this undated Steimnitz opinion.
28 The ALJ found that there was "other objective evidence that suggests claimant is exaggerating her

1 symptoms.” TR at 25. The ALJ set forth two areas of evidence for this conclusion: (1) the analysis
2 regarding the conflicting reports of other doctors, including Steimnitz’s previous reports, and (2)
3 claimant’s non-anatomic symptoms and histrionic tendencies. TR at 25.

4 First, the ALJ extensively reviewed the other medical reports which conflicted with
5 Steimnitz’s undated report. When the record has conflicting medical evidence, the ALJ may
6 determine credibility and resolve the conflict. Thomas, 278 F.3d at 957. When the record was
7 viewed as a whole, Steimnitz’s undated report was the only evidence which suggested that claimant
8 is permanently unable to perform even sedentary work. TR at 447-49.² The ALJ’s summary of the
9 other medical opinions support the ALJ’s finding that claimant has the residual capacity to perform
10 light work-related activities.

11 Second, the ALJ’s summary recognized that both treating and examining physicians noted
12 claimant’s exaggeration of symptoms on multiple occasions. In conjunction with the discrepancy
13 between the majority of the medical reports and Steimnitz’s undated report, claimant’s exaggeration
14 of symptoms provides substantial support for the ALJ’s decision to accord that report limited weight
15 and is not legal error.

16

17 B. Reaching Limitation

18 Claimant contends that the ALJ improperly discounted claimant’s left shoulder impairment.
19 Claimant’s reliance on Steimnitz’s undated report is misplaced, since, as discussed above, the ALJ
20 properly discounted this report. Contrary to defendant’s assertion, however, doctors other than
21 Steimnitz commented on claimant’s shoulder limitation. See, e.g., TR at 206, 211, 262, 370. In
22 several places in his opinion, the ALJ noted that other doctors had made note of claimant’s shoulder
23 complaints. TR at 23. Yet, the ALJ failed to include this limitation in his physical RFC assessment.
24 TR at 26-27. Because claimant contends this error is significant because “reaching” is required in
25 claimant’s previous work as a laundry folder,³ the court therefore must consider if this error is
26 significant or harmless.

27 A court need not reverse a decision if the error is harmless. Stout v. Comm’r of Social
28 Security Admin., 454 F.3d 1050, 1054 (9th Cir. 2006). Harmless error exists when the error, if

made, “was inconsequential to the ultimate non-disability determination.” *Id.* at 1055, citing Burch v. Barnhart, 400 F.3d 676, 682 (9th Cir. 2005) (concluding any error was nonprejudicial); Curry v. Sullivan, 925 F.2d 1127, 1131 (9th Cir. 1990) (concluding errors were “immaterial”). “A reviewing court cannot consider the error harmless unless it can confidently conclude that no reasonable ALJ, when fully crediting the testimony, could have reached a different disability determination.” Stout, 454 F.3d at 1056.

Even if the court were to credit the doctors’ opinions on claimant’s shoulder limitation as a matter of law, see Lester v. Chater, 81F.3d 821, 834 (9th Cir. 1995), the court is unable to conclude that no reasonable ALJ would have found that such a limitation would render claimant disabled. See, e.g., Social Security Ruling (“SSR”)⁴ 85-15 (“Varying degrees of limitations [on “[r]eaching, handling, fingering, and feeling”] would have different effects, and the assistance of a VS [vocational specialist] may be needed to determine the effects of the limitations.”). Accordingly, the court remands this issue to the ALJ to properly consider this medical evidence and issue a new physical RFC finding. McAllister v. Sullivan, 888 F.2d 599, 603 (9th Cir. 2004).⁵

II. Opinions of Mental Impairments

Claimant contends that the ALJ improperly ignored treating physicians’ testimony without providing specific legitimate reasons that are supported by substantial evidence in the record. See Smolen, 80 F.3d at 1285. Claimant sets forth three areas of contention: (1) that the ALJ’s failure to consider the testimony from Becker, Gonick-Hallows, and Hansell is legal error; (2) that the Appeals Council failed to provide legally sufficient reasons for rejecting the testimony of Goldfield; and (3) that the weight given to Stahl’s testimony is not substantially supported by the record.

A. ALJ’s Conclusions on Physicians’ Testimony

Claimant contends that the ALJ did not provide reasons to reject the opinions of Becker, Gonick-Hallows, and Hansell. The court agrees. While the “ALJ does not need to discuss every piece of evidence,” Wolff v. Barnhart, 341 F.3d 1006, 1012 (9th Cir. 2003), it cannot discard a treating physician’s opinion, if contradicted by other testimony, without setting forth “specific and

1 legitimate reasons.” Smolen, 80 F.3d at 1285. The ALJ mentioned treating physician Becker’s
2 reports only indirectly. See TR at 24 (“Records from claimant’s primary care physicians at Kaiser
3 Permanente showed she was briefly treated for symptoms of major depression . . . ”). Becker’s
4 GAF of forty-one to fifty conflicts directly with Stahl’s GAF of sixty. Compare TR at 268, 274,
5 276-78, 288, 292, 300, 308 with TR at 444. The ALJ provided no reasons for discounting Becker’s
6 testimony when deciding to grant heavy weight to Stahl’s assessment.⁶ TR at 25. The ALJ’s failure
7 to do so is legal error, and this issue will also be remanded to the ALJ to present those specific
8 reasons.⁷

9 The ALJ also provided no reasons why it chose to weigh Stahl’s consultative report more
10 heavily than the reports of Gonick-Hallows and Hansell. While the ALJ need not “recite the magic
11 words” and explicitly set forth why the ALJ rejected Gonick-Hallows and Hansell’s opinions,
12 Magallanes, 881 F.2d at 755, the ALJ does need to summarize the conflicting testimony and make
13 specific and legitimate findings to support its decision. Id.; see also SSR 96-6p (“[ALJs] are not
14 bound by findings made by State agency or other program physicians and psychologists, but they
15 may not ignore these opinions and must explain the weight given to the opinions in their decisions.”)
16 Here, the ALJ did not do so.

17 Defendant asserts that there was no conflict between the testimonies and the ALJ’s mental
18 RFC finding. These doctors’ testimonies are, in some important respects, inconsistent with Stahl’s
19 opinion and the ultimate mental RFC finding. For example, Gonick-Hallows opined that claimant
20 suffered from short-term memory loss.⁸ TR at 235. Hansell opined that claimant suffered moderate
21 restrictions in her ability to carry out detailed instructions, maintain attention and concentration for
22 extended period, perform work activities within a schedule and sustain an ordinary routine without
23 supervision. TR at 256. Stahl, however, opined that claimant suffered only slight restrictions in her
24 ability to maintain an appropriate work pace, to perform complex or varied tasks, to make
25 generalizations and decisions without immediate supervision, and to accept and carry out
26 responsibility for direction, control and planning. TR at 445. These conclusions are in conflict, in
27 that one finds moderate restrictions where the other finds only slight restrictions. When further
28 compared with the ALJ’s conclusion that claimant suffered a 40-50% reduction in her ability to

1 perform complex tasks and only a 10% reduction in simple tasks, TR at 27, this conflict appears all
2 the starker. The ALJ has not properly summarized the conflicting testimony and demonstrated why
3 it chose Stahl's assessment over the other physicians' assessments.⁹

4

5 B. Appeals Council Conclusions

6 Conversely, claimant's similar contention that the Appeals Council failed to provide legally
7 sufficient reasons for rejecting Goldfield's testimony is without merit. The Appeals Council set
8 forth several reasons why it gave Goldfield's testimony little weight. TR at 7. Under Ninth Circuit
9 precedent, that is all that is required. See Ramirez v. Shalala, 8 F.3d 1449, 1453 (9th Cir. 1993).

10

11 C. Sufficiency of Stahl's Report

12 Claimant argues that Stahl's report is based on "highly suspect psychological test data," and
13 is therefore not supported by substantial evidence. Pl.'s Mot. 15:14-16.¹⁰ An ALJ is specially
14 charged with weighing and evaluating testimony. See Magallanes, 881 F.2d at 750. In order to be
15 "substantial evidence," it need only be such that a reasonable person might find it adequate to
16 support the conclusion. Matthews, 10 F.3d at 679. Even if substantial evidence supports the fact
17 finding, the decision must be set aside if improper legal standards were applied in reaching that
18 decision. See Benitez, 573 F.2d at 655.

19

20 The ALJ set forth the particular areas where it accorded Stahl's interpretation of the
21 psychological data more weight with regard to the interpretations of Dunn, Steimnitz and Schubiner,
22 and why it adopted Stahl's opinion. TR at 24, 25. This is fully consistent with the ALJ's
23 responsibility to summarize the medical evidence as a whole, weigh any conflicting testimony and
24 explain why it accorded weight to one opinion over the other. Magallanes, 881 F.2d at 755. The
25 court may not "substitute its own determination of what the evidence shows for the ALJ's if there is
26 sufficient evidence to support the ALJ's outcome." Young v. Sullivan, 911 F.2d 180, 184 (9th Cir.
27 1990). Here, the ALJ properly carried out this function with regard to the opinions of Dunn,
28 Steimnitz and Schubiner, but, as discussed above, failed to do so with regard to the opinions of Becker, Gonick-Hallows and Hansell. Therefore, while the Stahl report contains substantial

1 evidence which supports the ALJ's conclusion, the decision must be set aside because the ALJ failed
2 to apply the proper legal standard with respect to all of the treating physicians' testimonies. See
3 Benitez, 573 F.2d at 655.

4

5 III. Credibility of Testimony by Claimant and Claimant's Daughter

6 Claimant maintains that the ALJ erred in finding that testimony by claimant and claimant's
7 daughter was not credible. In general, a claimant's testimony regarding a disability must be
8 supported by medical signs or laboratory findings that support the conclusion of a medically
9 determinable impairment. See 20 C.F.R. § 404.1529(b). But once such objective medical findings
10 are submitted, "under the Cotton-Varney-Gamer precedent . . . an adjudicator may not reject a
11 claimant's subjective complaints based solely on a lack of objective medical evidence to fully
12 corroborate the alleged severity of pain." Bunnell v. Sullivan, 947 F.2d 341, 345 (9th Cir. 1991) (en
13 banc), citing Cotton v. Bowen, 799 F.2d 1403, 1407 (9th Cir. 1986). The ALJ, moreover, must
14 consider a claimant's daily activities and course of treatment to determine if they are consistent with
15 the alleged severity of the pain. See Bunnell, 947 F.2d at 346-47. The factors relevant to an
16 analysis of subjective evidence include daily activities, inconsistencies in testimony, the
17 "effectiveness and adverse side effects" of pain medication and relevant character evidence. Orteza
18 v. Shalala, 50 F.3d 748, 750 (9th Cir. 1995), citing Bunnell, 947 F.2d at 346. When an ALJ rejects a
19 claimant's subjective symptom testimony, he must make specific findings supporting that
20 conclusion. Bunnell, 947 F.2d at 345. Notably, resolution of conflicts in the evidence and
21 testimony is a function solely for the ALJ. See Magallanes, 881 F.2d at 750.

22

23 A. Claimant's Testimony

24 Claimant argues that the ALJ improperly dismissed claimant's testimony without providing
25 clear and convincing evidence for that dismissal. While it would be improper to reject "subjective
26 complaints based solely on a lack of objective medical evidence to fully corroborate the alleged
27 severity of pain," Bunnell, 947 F.2d at 345, the ALJ clearly set forth that it was rejecting claimant's
28 testimony based on a combination of the underlying medical testimony, evidence indicating

1 claimant's histrionic tendencies and non-anatomic symptoms, and other evidence regarding
2 claimant's ability to conduct extensive activities of daily life. TR at 25. Furthermore, the ALJ also
3 properly weighed other character evidence, such as inconsistencies with regard to claimant's
4 testimony in other areas, such as her work history, educational history and ability to read and write
5 English. TR at 25.

6 Claimant's attempts to break down the ALJ's rationale into discrete packets is unavailing.
7 The court does not doubt that claimant has underlying medical conditions.¹¹ The ALJ noted as
8 much. TR at 26. It is, however, not the test that once some sort of objective medical evidence is
9 provided, the ALJ may not question the claimant's subjective pain. Cotton, 799 F.2d at 1407,
10 enforced at 20 C.F.R. § 404.1529(c). Instead, under Cotton, providing objective medical evidence is
11 only the first step. Id. Once that has happened, the ALJ is empowered to make a credibility finding
12 of "excess pain." Id. Furthermore, claimant's argument that the inconsistencies regarding
13 claimant's education level and English speaking abilities are not supported by the record is
14 unpersuasive. Claimant's testimony, presented at a hearing before the ALJ, regarding her work
15 history, educational history and English abilities provides adequate support for the ALJ's findings.
16 TR at 485, 486, 493, 495.

17

18 B. Claimant's Daughter's Testimony

19 Claimant further asserts that the ALJ erred by ignoring the daughter Mayling Castro's
20 testimony and failed to provide reasons germane to Mayling Castro. The ALJ must set forth reasons
21 germane to each lay witness in order to discount subjective testimony. Nguyen v. Chater, 100 F.3d
22 1462, 1467 (9th Cir. 1996), citing Dodrill v. Shalala, 12 F.3d 915, 919 (9th Cir. 1993). The ALJ did
23 set forth reasons that are germane to the daughter's testimony. The ALJ found that the daughter's
24 testimony was contradicted by the other objective clinical findings and the extent of the treatment.
25 TR at 26. Furthermore, the ALJ found that claimant was prone to histrionics. TR at 25. Any
26 observations by the daughter would be tainted by claimant's own exaggeration of pain. Since
27 resolution of conflicts in the evidence and testimony is a function solely for the ALJ, see
28 Magallanes, 881 F.2d at 750, the ALJ was justified in discounting the daughter's testimony.¹²

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VI. Instructions on Remand

This case is remanded to the ALJ for reconsideration with respect to two areas. The ALJ must consider claimant's reaching limitation when determining if claimant is in fact disabled. The ALJ must also present specific and legitimate evidence as to why it accords Stahl's report more weight than the opinions of treating physicians Becker, Gonick-Hallows and Hansell. The ALJ has sufficiently supported its conclusions with regard to (1) discounting Steimnitz's undated opinion; (2) choosing Stahl's report over the testimonies of Dunn, Steimnitz and Schubiner; and (3) discounting the testimonies of claimant and claimant's daughter. The Appeals Council sufficiently supported its conclusion with regard to discounting Goldfield's testimony.¹³

CONCLUSION

Claimant's motion for summary judgment is **GRANTED** in part and **DENIED** in part for the reasons discussed above. The court remands this proceeding to the ALJ for further administrative proceedings consistent with this opinion. Defendant's motion for summary judgment is DENIED.

IT IS SO ORDERED.

Dated: March 26, 2009


MARILYN HALL PATEL
United States District Court Judge
Northern District of California

ENDNOTES

1. “Sedentary work involves lifting no more than ten pounds at a time” 20 C.F.R. 404.1567(a)
2 “[P]eriods of standing or walking should generally total no more than about two hours of an eight-hour
3 workday, and sitting should generally total approximately six hours of an eight-hour workday.” Social
4 Security Ruling (“SSR”) 83-10. See also, infra note 4.
5. Claimant submits a new report from Steimnitz. Pl.’s Mot., Exh. A. Because the district court may
6 not affirm based on grounds not established by the ALJ, the court does not accord the new report any
7 weight. Pinto v. Massanari, 249 F.3d 840, 847 (9th Cir. 2001), citing SEC v. Chenery Corp., 332 U.S.
8 194, 196 (1947).
9. According to the Dictionary of Occupational Titles, a folder (code 369 687 018, see TR at 500) has
10 the following description: “Folds fluff-dried or pressed laundry, such as shirts, towels, uniforms, and
11 jackets: Shakes out, smooths, folds, sorts, and stacks wash according to identification tags. Inspects
12 pressed laundry for holes or tears, and separates defective articles for transfer to repair department.
13 Folds laundry, preparatory to wrapping, for delivery to customer. Folds pressed shirts around cardboard
14 forms and inserts assembly in plastic bags. May attach missing buttons to articles, using
15 button-sewing-machine or button-attaching machine. May unload tumbler. May turn socks, match pairs,
and tie socks into bundles. May be designated according to type of laundry folded as Shirt Folder
(laundry & rel.) I; Wearing-Apparel Folder (laundry & rel.). GOE: 06.04.35 STRENGTH: L GED: R2
M1 L1 SVP: 2 DLU: 78.” Dictionary of Occupational Titles, CODE: 369.687.018, TITLE: Folder
(Laundry & related), <http://www.oaj.dol.gov/PUBLIC/DOT/REFERENCES/DOT03B.HTM>
(last visited Feb. 18, 2009).
16. SSRs are rulings issued by the Social Security Administration to clarify the implementation of
17 regulations and policies. SSRs are binding on the Social Security Administration and are entitled to
18 some deference, but do not have the force of law. SSRs will be ignored when they are inconsistent with
19 statutes. Holohan v. Massanari, 246 F.3d 1195, 1202 n.1 (9th Cir. 2001).
20. The court declines claimant’s invitation to forgo remand and order the payment of benefits. A
district court can order the immediate award of benefits if “1) the ALJ failed to provide legally sufficient
reasons for rejecting evidence; 2) there are no outstanding issues that must be resolved before a
determination of disability can be made; and 3) it is clear from the record that the ALJ would be
required to find claimant disabled were such evidence credited.” Benecke v. Barnhart, 379 F.3d, 587,
593 (9th Cir. 2004). Because the addition of a reaching limitation on work ability requires the assistance
of a vocational expert, the court is not convinced that there are no outstanding issues that must be
resolved. Instead, “additional proceedings can remedy defects in the original administrative
proceedings,” and this action should therefore be remanded. McAllister, 888 F.2d at 603.
21. Becker’s GAF assessments sometimes conflict with Teresa Soto’s assessments, often given on the
same date. Compare TR at 274 with TR at 280. The court, however, may not affirm an ALJ decision
on grounds the ALJ “did not invoke in making its decision.” Pinto, 249 F.3d at 847.
22. Defendant properly notes that failure to reference a GAF alone is not enough to order remand. See
Howard v. Comm’r of Social Security, 276 F.3d 235, 241 (6th Cir. 2002). That argument is inapposite
here. In Howard, the issue was whether the ALJ’s failure to reference a GAF *at all* in its findings was
enough for remand. Id. The problem here, however, is that the ALJ was presented with two different
GAFs from treating and consultative physicians and did not set forth specific and legitimate reasons for
choosing to discount a treating physician’s testimony in favor of an consultative physician’s testimony.
23. Claimant correctly asserts that the ALJ only referenced Gonick-Hallows’ opinion with regard to
claimant’s histrionics and that she seemed impulsive; and not, as defendant asserts, with regard to her
short term memory loss. TR at 25.

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- 1 9. Defendant's assertion that the ALJ was justified in adopting Stahl's testimony over other testimony
 2 based on claimant's non-compliance with her anti-depressant medication is not a ground that the ALJ
 3 used. Accordingly, the court may not rely on it to affirm the ALJ opinion. Pinto, 249 F.3d at 847.
- 4 10. Claimant further argues that Stahl's report is internally inconsistent. Claimant's proposed
 inconsistency—that Stahl rated some of claimant's impairments only slight, but then accorded her a
 GAF of sixty—is not actually inconsistent. A GAF of sixty is a borderline score. See Global
 Assessment of Functioning (GAF) Scale, Diagnostic and Statistical Manual of Mental Disorders 34 (4th
 ed. Text Revision 2000). A person scoring only one point higher is classified as having mild problems.
 Furthermore, a score in the fifty-one to sixty range indicates that the person only has moderate difficulty
 in social, occupational or school functioning. If anything, based on Stahl's report on a whole, Stahl
 appears to have conservatively awarded a GAF of sixty. See TR at 432-46.
- 5 11. Claimant's reliance on Smolen v. Chater is misplaced. In Smolen, the ALJ improperly considered
 only some of claimant's underlying medical conditions. 80 F.3d at 1281. The ALJ here was fully aware
 of all of claimant's physical conditions. Furthermore, in Smolen, the ALJ based his entire credibility
 analysis on whether or not there was an underlying medical cause. Here, the ALJ based its conclusion
 based on multiple factors throughout the entire record.
- 6 12. Although not directly raised in the ALJ decision, it is interesting to note how similar the mother's
 and daughter's testimony are. Compare TR at 81 with TR at 120. In fact, one of the few differences
 between their testimonies is the daughter's assessment that "she [claimant] complains about brushing
 her hair because her scalp hurts." TR at 120. Since this is apparently the only reference to scalp pain
 in the entire record, it may provide further evidence of claimant's histrionics and non-anatomic
 responses to pain.
- 7 13. Because the court is remanding this decision to the ALJ, it need not address claimant's arguments
 regarding the vocational expert's testimony pursuant to the ALJ's hypotheticals. The vocational
 expert's testimony is already unsupportable because the ALJ failed to consider all relevant limitations,
 such as the reaching limitation. See Lewis v. Apfel, 263 F.3d 503, 517 (9th Cir. 2001) ("Hypothetical
 questions asked of the vocational expert must set out all of the claimant's impairments."). Because the
 ALJ can no longer rely on that vocational expert's opinion, claimant's argument regarding the ALJ's
 alleged failure to include periods of decompensation and allegedly arbitrary translation of RFCs into
 percentages is rendered moot. The ALJ will have to consult a vocational expert with regard to the
 impact of the reaching limitation, See SSR 85-15 ("Varying degrees of limitations [on "[r]eaching,
 handling, fingering, and feeling"] would have different effects, and the assistance of a VS [vocational
 specialist] may be needed to determine the effects of the limitations."), and to address the effect, if any,
 that limitation has on claimant's ability to perform her past work, or any work. See Bowen, 482 U.S.
 at 141-43.

8 With regard to the hypotheticals, the ALJ is allowed to "limit a hypothetical to those
 impairments that are supported by substantial evidence in the record." Osenbrook v. Apfel, 240 F.3d
 1157, 1165 (9th Cir. 2001). While the ALJ failed to apply the proper legal standard in according Stahl's
 report more weight over the opinions of Gonick-Hallows, Hansell and Becker, the report itself provides
 substantial evidence for the percentages the ALJ supplied to the vocational expert. Should the ALJ
 continue to rely on Stahl's report, the percentage values are supportable. Furthermore, the periods of
 decompensation noted by claimant happened in 1992 and 2001—before the period of disability claimed
 here. TR at 342. There is no indication that claimant has suffered any periods of decompensation since
 claiming her disability in 2003. In evaluating a disability, an ALJ looks to the onset date, and must
 determine if a claimant is unable "to engage in any substantial gainful activity by reason of any . . .
 mental impairment that can be expected to result in death or that has lasted or can last for at least 12
 continuous months." See 42 U.S.C. § 1382c(a)(3)(A). Accordingly, episodes of decompensation which
 happened prior to an onset date are of less relevance.